IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 8537 of 2005

Between:

Inturu Venkata Rao, S/o. Peda Bramahaiah,
D.No. 2-161, Subbaiah Palam village, Turumella, Rompicherla Mandal, Guntur District.

..... PETITIONER

AND

1 Govt of A.P., Panchayat Raj Engineering Dept., rep. by Engineer-in-chief,

Panchayat Raj, Nabard, Errumanzil, Hyderabad.
2 Superintending Engineer, Panchayat Raj Dept., Guntur.
3 Mr. Vunnam Narsimha Rao, S/o. Vishwanadham,
R/o.J. Anapadu, Piddurguralla Mandal, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction, more in the nature of mandamus, declaring the Memo No. NB10/7911/03./2005 dt. 22.03.2005 of Respondent No.1 directing Respondent No. 2 to award the contract to Mr. Vunnam Narasimha Rao, the Respondent No.3 herein for laying of the Road from pullipadu to Srinivaspuram in Gurajala Mandal of Guntur District and the consequent award of the said contract to Mr. Vunnam Narasimha Rao as arbitrary, unfair and contrary to the G.O.Ms.No.94 dt. 01.07.2003 and terms and conditions of the terms and conditions of the tender notification dated 22.01.2005 and also violative of the rights of the petitioner under Articles 14 and 21 of the Constitution of India and consequently set side the same and consequentially direct the respodnent Nos. 1 and 2 to award the said contract to the petitioner herein and pass such other order or orders.

Counsel for the Petitioner:MR.MINNIKANTI LAXMIPRASAD

Counsel for the Respondents1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for respondent No.3: Sri T.Bali Reddy Sri T.Suresh Reddy.

The Court made the following:

O R D E R:

This writ petition has been filed by Inturu Venkata Rao with a prayer to issue a writ, order or direction more in the nature of Mandamus declaring the Memo No: BB10/7911/03/2005, Dated 22-03-2005 issued by the 1st respondent directing the 2nd respondent to award the contract to Mr.Vunnam Narasimha Rao-the third respondent for laying of the Road from Pulipadu to Srinivasapuram in Gurajala Mandal of Guntur District as arbitrary, unfair and contrary to G.P.Ms.No.94, dated 01-07-2003 and terms and conditions of the Tender Notification dated 22-01-2003 and also violative of the rights of the petitioner under Article 14 of the Constitution of India.

1st respondent issued tender notification No.33/04-05
dated 17-01-2005 in Enadu Telugu Daily, Hyderabad edition on 22-01-2005 inviting tenders from eligible contractors for laying road from Pulipadu to Srinivasapuram in Gurajala Mandal of Guntur District. The writ petitioner, who is a Class-I contractor, submitted the tender documents to the

2nd respondent-Superintendent Engineer, Pancnhayat Raj Department, Guntur, on 15-02-2005. The tender documents consist two parts. First part contains technical bid and second part contains price bid. Technical bid was opened on 15-02-2005 and price bid was opened on 18-02-2005. The writ petitioner is the lowest tenderer. When his tender was sent to the 2nd respondent-Superintendent Engineer for approval, certain defects were pointed out and bid of the writ petitioner was rejected. Instead, the contract was awarded to the 3rd respondent whose bid is higher than the writ petitioner.

The respondents 1 and 2 filed counter affidavits. The respondent No.3 also filed counter affidavit. One G.Raja Rao has sworn to the counter affidavits filed on behalf of the respondents 1 and 2. It is stated in the counter affidavit that initially, the technical bid of the writ petitioner was accepted due to oversight and subsequently it was found that the writ petitioner did not possess Mini Hot Mix Plant, which is one of the required conditions for execution of the road work. It is further stated that the writ petitioner was informed about the disqualification and deposit was paid to him vide letter No. TO/149/05, dated 06-04-2005. The counter affidavit of the 3rd respondent reads that the petitioner has produced a lease

deed obtained from one Ch.Balaji, who is said to be owning Hot Mix Mini Plant of Capacity of 6 to 10 tones. But the certificate issued by the Executive Engineer R & B would show that the said Balaji was having Hot Mix Plant of capacity of 40 to 60 tones. In such circumstances, the petitioner had to be disqualified under technical bid. One of the conditions in the tender notification is tenderer should possess equipment of B.T. work with 'Hot Mix Mini Plant'. The counter affidavit further reads that the writ petitioner produced a false deed as if he secured a Hot Mix Mini Plant from Balaji on hire.

Heard Sri M.Laxmi Prasad, learned counsel for the petitioner and learned Government Pleader for Panchayat Raj & Rural Development appearing for respondents 1 and 2 and Sri T.Bali Reddy, learned senior counsel appearing for the 3rd respondent.

A fact remains that the writ petitioner submitted tender documents on line through computer by logging on to the Internet. The technical bid was opened on 15-02-2005 and whereas price bid was opened on 18-02-2005. The price quoted by the writ petitioner is comparatively far less than the price quoted by the 3rd respondent. In normal circumstances, the contract could have been awarded to the writ petitioner. But the department proceeded to reject the bid of the writ petitioner on the ground that he did not possess Mini Hot Mix plant, which is one of the essential conditions of the tender. An argument has been advanced by the writ petitioner that possessing Mini Hot Mix Plant with higher capacity is not a disqualification and therefore rejection of the petitioner's tender is arbitrary and illegal.

The respondents 1 and 2 have rejected the bid of the writ petitioner by issuing separate proceedings. Since the said proceedings are not the subject matter of the writ petition, I am constrained to make any observations with regard to the said rejection order. However, it is open to the writ petitioner to question the rejection order before appropriate forum. But one fact is evident that the respondents 1 and 2 having accepted the technical bid of the writ petitioner ought not to have passed rejection order without giving any opportunity to him calling for explanation with regard to deficiencies pointed out. The respondents 1 and 2, claims to have rejected the bid and communicated the same on 06-04-2005. But it is pertinent to note that the respondents accepted the tender of the 3rd respondent who is admittedly quoted higher price than the writ petitioner on 22-03-2005 itself. I am stopping here, since any observation made in this regard, may have bearing on the contentions of the parties in future litigation. Since the price bid offered by the writ petitioner has been rejected and separate proceedings have been issued by the

respondents 1 and 2, nothing survives in the writ petition. Therefore, the writ petition is disposed of giving liberty to the petitioner to question the rejection order passed by the 1st and 2nd respondents. During the course of arguments, it is brought to the notice of the court by the learned Government Pleader that the rejection order had been sent to the writ petitioner and the same was returned with postal endorsement as addressee absent continuously for seven days. Therefore, the respondents 1 and 2 are directed to serve the order of rejection on the writ petitioner or to his counsel within ten days from the date of receipt of a copy of the order.

With the above observation, the writ petition is disposed of. No costs.

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27-06-2005

Note: CC in two days.

B/o Mjl/*

To,

1 The Engineer-in-Chief, Govt of A.P., Panchayat Raj Engineering Dept.,

Panchayat Raj, Nabard, Errumanzil, Hyderabad.

2 The Superintending Engineer, Panchayat Raj Dept., Guntur.

3. 2 CCs to G.P. for Panchayatraj and rural development, High court

buildings, Hyderabad.

4. 2 CD copies.

*Form-NIC-OGS/WP{**JGK**}*